

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Douglas J. Carpenter,		NOTICE OF DETERMINATION OF
	Complainant,	PRIMA FACIE VIOLATION
vs.		AND
Jeffrey T. Walker,		NOTICE OF AND ORDER FOR
	Respondent.	PROBABLE CAUSE HEARING

**TO: Parties**

On September 24, 2010, Douglas Carpenter filed a Campaign Complaint with the Office of Administrative Hearings alleging that Jeffrey T. Walker violated Minnesota Statutes § 211B.06 by preparing and disseminating false campaign material. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minnesota Statutes § 211B.06

**THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN** that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **10:00 a.m. on Thursday, September 30, 2010**. The hearing will be held by call-in telephone conference. You must call: **1-888-742-5095** at that time. When the system asks for your numeric pass code, enter **"5668724759"** on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Johnson at [William.Johnson@state.mn.us](mailto:William.Johnson@state.mn.us) or faxed to 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that

the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minnesota Statutes § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: September 28, 2010

/s/ Eric L. Lipman \_\_\_\_\_  
ERIC L. LIPMAN  
Administrative Law Judge

## MEMORANDUM

Complainant Douglas J. Carpenter is a candidate in the November 2010 election for Itasca County Auditor/Treasurer. The Respondent, Jeffrey T. Walker, is the incumbent Itasca County Auditor/Treasurer and is seeking re-election.

The Complaint alleges that Mr. Walker has stated falsely in campaign material that he is a certified public account (CPA). According to the Complaint, Mr. Walker's CPA authority expired in 2008. The Complainant has submitted copies of campaign advertisements that Mr. Walker placed in the *Grand Rapids Herald Review* in which he lists "certified public accountant" as one of his qualifications. The Complaint alleges that, by preparing and disseminating the campaign advertisements, Mr. Walker violated Minn. Stat. § 211B.06.

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material with respect to the personal or political character or acts of a candidate. In order to be found to have violated this section, a person must intentionally participate in the preparation or dissemination of campaign material that the person knows is false or communicates with reckless disregard of whether it is false.

Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”<sup>1</sup>

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts.<sup>2</sup> It does not prohibit inferences or implications, even if misleading. Moreover, the burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.<sup>3</sup>

To prove a violation at the hearing, the Complainant must show that the statement is substantively false and that the person or persons who prepared, disseminated or broadcasted the advertisement did so knowing it was false or communicated it with reckless disregard of whether it was false. The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard from *New York Times v. Sullivan*.<sup>4</sup> Based on this standard, the Complainant has the burden to prove by clear and convincing evidence that the Respondent prepared or disseminated the statement knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent “in fact entertained serious doubts” as to the truth of the ad or acted “with a high degree of awareness” of its probable falsity.<sup>5</sup>

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>6</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>7</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>8</sup>

The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06. Mr. Walker’s

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<sup>1</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>2</sup> *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

<sup>3</sup> *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

<sup>4</sup> *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

<sup>5</sup> *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). See also *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), rev. denied (Minn. 2006).

<sup>6</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

statement in the campaign advertisements that he is a certified public accountant reflect upon his personal character and is capable of being proven either true or false. Accordingly, Complainant's allegation will proceed to a probable cause hearing as ordered.

**E.L.L.**